

Appeal from a decision of the Director, Minerals Management Service, affirming an order to pay additional royalties on Federal offshore oil and gas leases. MMS-89-0033-OCS.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Royalties: Generally--Statute of Limitations

MMS' demands for additional royalty on Federal offshore oil and gas leases are administrative actions that are not covered by 28 U.S.C. § 2415(a) (1988). Further, a lessee has a duty to disclose records that it was legally required to compile and voluntarily chose to retain beyond 6 years, so that, notwithstanding the 6-year limit on recordkeeping imposed by 30 U.S.C. § 1713(b) (1988), MMS is not barred from making demands for payment of additional royalty where the lessee has retained relevant documents. The provisions of 30 U.S.C. § 1755 (1988) bar actions to recover penalties and, thus, do not relate to MMS demands for collection of additional royalty.

2. Oil and Gas Leases: Royalties

The offsetting of overpayments of royalty on Federal offshore oil and gas leases against underpayments of royalty is permitted only with the royalty account of a single lease after an official audit.

3. Oil and Gas Leases: Royalties

MMS is not barred from issuing a demand for additional royalty on a lease due to underpayment by a settlement agreement between MMS and various producers where the demand is not expressly included in the terms of that agreement, and where, in any event, there is evidence that MMS' contemporary interpretation of that agreement was that it did not bar it from asserting claims based on underpayments.

APPEARANCES: Margaret Broussard, Esq., for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Chevron U.S.A., Inc. (Chevron), appeals from a decision of the Director, Minerals Management Service (MMS), affirming an order to pay additional royalties on 12 Federal offshore oil and gas leases. The Director's decision ruled that the demand for payment was not barred by statutes of limitations or by a settlement agreement between MMS and Chevron (and other producers), and that Chevron was not entitled to an offset for an overpayment of royalties made on a thirteenth lease.

On November 5, 1987, the Lakewood Area Compliance Office (LACO), MMS, wrote to Chevron, advising that it was reviewing the December 1984 audit report of the Office of the Inspector General (OIG), U.S. Department of the Interior, along with the responses of Gulf Oil Corporation (Gulf), Chevron's predecessor in interest. 1/ The OIG audit report covered the period from January 1, 1977, through August 31, 1981. LACO notified Chevron that it

had reviewed the issue, "Incorrect Transportation Allowance" on 15 Federal offshore oil and gas leases, and advised Chevron that it owed additional royalty on those leases. That was because OIG had discovered that Gulf

had deducted a transportation allowance different from those approved by MMS for two periods, from May 1977 through August 1977, and from May through June 1981, resulting in royalty underpayments on 12 of the leases totalling \$59,863, later revised to \$56,656. The record indicates that those

two periods were "test months" (May 31, 1989, Memorandum from LACO to the MMS Directorate). Chevron apparently paid that amount in January 1988. 2/

On September 14, 1988, LACO sent Chevron a second letter, noting this history, indicating that similar discrepancies on those leases might also exist for other months, and directing Chevron to conduct a comprehensive

1/ The full title of the audit report was "Audit of Federal and Indian Oil and Gas Royalties Paid by Gulf Oil Corporation, January 1, 1977 through August 31, 1984, Minerals Management Service." LACO's letter set out the details of the merger of Chevron and Gulf.

2/ LACO's Sept. 14, 1988, letter indicates that the payment was made in January 1987, which is unlikely, as the demand for payment was not made until November 1987.

The 12 leases were identified as OCS-G 0456, OCS-G 0457, OCS-G 0459, OCS-G 0461 through OCS-G 0465, OCS-G 0498, OCS-G 1259, OCS-G 1260, and OCS-1492.

On May 10, 1988, LACO demanded late payment charges from Chevron on the \$56,656. That demand is not directly at issue in the present appeal.

internal examination of all other months for which Gulf or Chevron was the designated royalty payor to assure that all such problems are identified and resolved. LACO expressly directed Chevron to perform an internal examination of 12 leases identified in the letter for January 1, 1977, through December 31, 1977, for those months not previously assessed and to determine the correct transportation allowance and the amount of the underpayment.

Chevron complied with LACO's September 1988 order by response filed on October 13, 1988, calculating its additional Federal royalty obligation to be \$69,921.10, and providing calculations and supporting documentation.

In December 1988, MMS, acting through the Deputy Assistant Secretary for Lands and Minerals Management, executed a letter agreement with certain oil and gas producers, including Chevron, settling certain disputes over audit issues. ^{3/} A document setting out the terms of that agreement, dated December 28, 1988, was signed by the Deputy Assistant Secretary and counsel for the producers (MMS Report on Docket No. MMS-89-0033-OCS, May 31, 1989, Att. 9)

On January 3, 1989, LACO issued the demand letter that is under review. LACO concurred with Chevron's calculations of underpayment of \$69,921.10, noting that they resulted from Gulf's deducting transportation allowances different than those approved by MMS during the periods January 1977 through April 1977 and September 1977 through December 1977. LACO stated that Chevron had identified royalty overpayments totaling \$26,461.46 for a 13th lease (OCS-G 1256) during the same period, as a result of its not deducting an approved transportation allowance.

LACO's demand letter noted that Chevron had attempted to offset the overpayments on lease OCS-G 1256 against underpayments on the other 12 leases. Ruling that MMS does not allow offsetting or netting of over and underpayments between leases that are not included in a unit or communitization agreement, and that offsetting is allowable only when lease royalty over and underpayments are identified during a single audit, citing Shell Oil Co., 52 IBLA 74 (1981), LACO allowed an offset of only \$9,533, the amount of the underpayment associated with the lease on which the overpayment occurred. ^{4/} Chevron timely appealed to the Director, MMS.

^{3/} The participating entities were Amoco Production Company, ARCO Oil and Gas Company, Conoco, Inc., Marathon Oil Company, Mobil Exploration and Producing U.S., Inc., Exxon Company, U.S.A., Shell Oil Company, Tenneco Oil Company, Texaco, Inc., Transco Exploration Company, Union Exploration Partners, Ltd./Union Oil Company of California, and Chevron U.S.A., Inc.

^{4/} The demand for additional royalty on lease OCS-G 1256 was made by separate letter dated Nov. 5, 1987, and is not directly at issue in the instant appeal. In order to recoup the overpayment, Chevron was instructed to submit a "recoupment request in accordance with MMS Payor Handbook instructions."

Before the Director, Chevron raised its argument that the demand for payment was barred by the December 1988 settlement agreement between MMS and Chevron (and other producers). Chevron argued that MMS had agreed to close its audit of Chevron's payments pre-September 30, 1980, except for five issues. Since the issue involved in LACO's demand was not one of those five, it argued, MMS was precluded from enforcing that claim, which was filed subsequent to the execution of the settlement agreement (Statement of Reasons to Director, MMS, at 9-10). Additionally, Chevron argued that the demand was barred by the 6-year Federal statute of limitations, 28 U.S.C. § 2415 (1988), and that MMS should expand its policy concerning offsets to allow them between leases in audit situations.

On June 7, 1990, the Director, MMS, denied Chevron's appeal in the decision presently before us. That decision rejected all three arguments raised by Chevron. Chevron timely appealed the Director's decision to this Board, renewing its arguments before the Director.

[1] The statute of limitations cited by Chevron, 28 U.S.C. § 2415(a) (1988), provides that "every action for money damages brought by the United States * * * which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues." We have long ruled that statutes establishing time limitations for the commencement of judicial actions for damages on behalf of the United States do not limit administrative proceedings within the Department of the Interior. Quality Broadcasting Corp., 126 IBLA 174, 188 (1993); Benson-Montin-Greer Drilling Corp., 123 IBLA 341, 352, 99 I.D. 115, 121 (1992); Anadarko Petroleum Corp., 122 IBLA 141, 147-48 (1992), and cases cited. We have specifically declined to rule that MMS demands for additional royalty are barred by that provision. Anadarko Petroleum Corp., 122 IBLA 141, 147-48 (1992); Marathon Oil Co., 119 IBLA 345, 352 (1991); Forest Oil Corp., 111 IBLA 284, 286-87 (1989).

We hold that this provision does not preclude MMS from demanding such payment. Such demand is not a judicial action for money damages brought by the United States, but rather is administrative action not subject to the statute of limitations. See S.E.R., Jobs for Progress, Inc. v. United States, 759 F.2d 1, 5 (Fed. Cir. 1985); Alaska Statebank, 111 IBLA 300, 311-12 (1989). It is not within our authority to decide whether the statute of limitations would bar a judicial suit to collect royalty deemed owing on a lease. Such determination is properly made by the court before which any collection proceeding is brought. Alaska Statebank, 111 IBLA at 312; see Phillips Petroleum Co. v. Lujan, 951 F.2d 257, 259-60 (10th Cir. 1991).

Chevron also cites the 6-year recordkeeping provision of section 103(b) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1713(b) (1988), as limiting MMS' authority to make demands for payment. A lessee has a duty to disclose records that it was legally required to compile and voluntarily chose to retain beyond 6 years.

Phillips Petroleum v. Lujan, 951 F.2d at 260 n.5. It follows that section 103(b) does not bar MMS from making demands for payment of additional royalty where it has retained relevant documents. ^{5/} See Amoco Production Co., 123 IBLA 278, 280 (1992).

The provisions of section 307 of FOGRMA, 30 U.S.C. § 1755 (1988), cited by Chevron, bar any action to recover penalties and, thus, do not relate to the present action, which is for collection of additional royalty.

[2] The offsetting of overpayments of royalty on Federal offshore oil and gas leases against underpayments of royalty generally has been permitted only with the royalty account of a single lease after an official audit. Pogo Producing Co., 121 IBLA 270, 274-75 (1991); Chevron U.S.A., Inc., 111 IBLA 92, 94-95 (1989); Union Oil Company of California, 110 IBLA 62, 64 (1989), and cases cited. MMS has allowed an offset to the extent permitted. We see no reason to extend that limitation in this case.

[3] Finally, we reject Chevron's argument that MMS' September 14, 1988, demand letter from LACO was barred by the terms of the December 28, 1988, settlement contract between MMS and various oil and gas producers, including Chevron. That document, by its own terms, does not apply to MMS' September 14, 1988, demand letter. The settlement document, in the form of a letter from attorneys from the oil producers to the then Deputy Assistant Secretary, Lands and Minerals Management, states:

The purpose of this letter is to confirm the agreements that have been reached regarding the orders, described below, that were issued by [MMS] and that demand the production of certain specified documents on or before October 31, 1988:

(1) Orders dated September 30, 1988, issued by Nick L. Kelly, Area Manager, Dallas Area Compliance Office, MMS, addressed to Amoco Production Company, ARCO Oil and Gas Company, Conoco Inc., Marathon Oil Company and Mobil Exploration and Producing U.S., Inc.;

(2) Orders dated September 30, 1988, issued by Erasmo Gonzales, Area Manager, Houston Area Compliance Office, MMS, addressed to Exxon Company, U.S.A., Shell Oil Company, Tenneco Oil Exploration and Production (a unit of Tenneco Oil Company), Texaco Inc., Transco Exploration Company and Union Exploration Partners, Ltd./Union Oil Company of California; and

^{5/} We do not rule out the possibility that a lessee might be able to avoid liability by demonstrating that it has legally destroyed documents essential to proving that it is not liable for additional royalties. However, Chevron has not so alleged here, and the record strongly suggests otherwise.

(3) Orders dated September 28, 1988, issued by Larry M. Crow, Area Manager, Lakewood Area Compliance office, MMS, addressed to Chevron U.S.A., Inc.

The order on appeal here was dated September 14, 1988, and, thus, is not included in the settlement agreement.

Even assuming arguendo, as Judge Burski would hold, that the December 28, 1988, agreement does not cover the underlying order, appellants would not prevail. Thus, it is significant that the Associate Director for Royalty Management expressly cautioned in the January 11, 1989, closure order, that "[i]n situations where subsequent evidence at other companies or facilities indicates the possibility of fraud, collusion, or underpayment, this letter does not preclude further examination of records and transactions of previously audited periods" (emphasis supplied). The underlined phrase represents MMS' contemporaneous interpretation of the agreement as not barring assertions of claims based on underpayment, which interpretation is consistent with MMS' present view of the agreement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING SEPARATELY:

I concur with the lead opinion except to the extent that it holds that, because the underlying order was not specifically listed in paragraph 1 of the December 28, 1988, agreement, it was not affected thereby. It seems to me that this analysis is fundamentally flawed as a matter of simple logic since it assumes that recitation of the proximate cause of the agreement necessarily limits the scope of the agreement to those matters. The fact that a specific controversy may serve as a catalyst for an agreement scarcely prevents the parties from entering into a broadranging resolution of both the specific and other, on-going disputes. Not only does nothing in the terms of the agreement, itself, disclose an intent to limit its effects to the three specified orders, but the alternate grounds urged by MMS as a basis for affirming its actions involve interpretations of the agreement which would simply not be germane if the agreement were only applicable to those three orders.

However, though I agree with appellant that the agreement was designed to cover all on-going controversies, not merely those specifically referenced in paragraph 1, I also find myself in agreement with the lead opinion's conclusion that paragraph 6 of the agreement, when read in conjunction with the audit closure order of January 11, 1989, is clearly susceptible of being read as merely permitting Chevron to destroy pre-1980 records and not preventing MMS from attempting to recover additional underpaid royalties for the pre-1980 period, particularly in light of the fact that Chevron's attorneys drafted the agreement and any ambiguity is properly resolved against it. On this basis, I concur with the disposition of the instant appeal.

James L. Burski
Administrative Judge